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 9 PALA BAND OF MISSION INDIANS

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 12 UNITED STATES DISTRICT COURT
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 14 SOUTHERN DISTRICT OF CALIFORNIA

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 18 UNITE HERE International Union,

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 20 Petitioner,

21 v.

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 23 PALA BAND OF MISSION INDIANS,

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 25 Respondent.

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 27 Case No. 07-CV-2312 W (AJB)

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**RESPONDENT PALA BAND OF MISSION
 30 INDIANS' NOTICE OF MOTION AND
 31 MOTION TO DISMISS PETITION TO
 32 CONFIRM ARBITRATION AWARD**

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 34 Judge: Thomas J. Whelan
 35 Ctrm: 7
 36 Date: 10:30 a.m.
 37 Time: May 5, 2008

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 39 [NO ORAL ARGUMENT PURSUANT TO
 40 LOCAL RULE]

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 43 TO PLAINTIFF UNITE HERE INTERNATIONAL UNION AND ITS ATTORNEY OF RECORD:

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 45 PLEASE TAKE NOTICE that Respondent PALA BAND OF MISSION INDIANS'
 46 ("Pala Band") hereby moves this Court for an order dismissing Petitioner's Petition to Confirm
 47 Arbitration Award pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

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 49 Pala Band's Motion to Dismiss is made on the grounds that this Court does not have
 50 subject matter jurisdiction over Petitioner's Petition because (1) the Petition does not require
 51 resolution of a substantial question of federal law; (2) there is no general right of private action
 52 created by the federal law on which Petitioner's petition purports to be based; and (3) Petitioner's
 53 Petition is barred by the Pala Band's sovereign immunity. Pala Band's Motion is also made on the

1 grounds that the Petition fails to state a claim for relief because Petitioner is required to bring any
2 petition to confirm the arbitration award that is the subject of the Petition before the Intertribal Court
3 for Southern California prior to invoking the jurisdiction of this Court.

4 Pala Band's Motion is based upon this Notice of Motion and Motion to Dismiss, its
5 Memorandum of Points and Authorities in Support of its Motion, the Declaration of Theodore R.
6 Scott in Support of its Motion and exhibits attached thereto, the complete files and records of this
7 action, including the Petition, and on such further exhibits, pleadings or argument as may hereafter
8 be presented to the Court.

9 Dated: April 4, 2008
10

11 s/Theodore R. Scott
12 THEODORE R. SCOTT
13 LITTLER MENDELSON
14 A Professional Corporation
15 Attorneys for Respondent
16 PALA BAND OF MISSION INDIANS
17 E-mail: tscott@littler.com
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1 UNITE HERE International Union v. Pala Band of Mission Indians Case No. 07-CV-2312 W (AJB)

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3 **PROOF OF SERVICE BY MAIL**

4 I am employed in San Diego County, California. I am over the age of eighteen years
 5 and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900,
 6 San Diego, California 92101-3577. I am readily familiar with this firm's practice for collection and
 7 processing of correspondence for mailing with the United States Postal Service. On April 4, 2008, I
 8 placed with this firm at the above address for deposit with the United States Postal Service a true and
 9 correct copy of the within documents:

10 1. RESPONDENT PALA BAND OF MISSION INDIANS'
 11 NOTICE OF MOTION AND MOTION TO DISMISS
 PETITION TO CONFIRM ARBITRATION AWARD

12 2. RESPONDENT PALA BAND OF MISSION INDIANS'
 13 MEMORANDUM OF POINTS AND AUTHORITIES IN
 SUPPORT OF ITS MOTION TO DISMISS PETITION TO
 CONFIRM ARBITRATION AWARD

15 3. DECLARATION OF THEODORE R. SCOTT IN SUPPORT
 16 OF RESPONDENT PALA BAND OF MISSION INDIANS'
 MOTION TO DISMISS PETITION TO CONFIRM
 ARBITRATION AWARD

17 4. RESPONDENT PALA BAND OF MISSION INDIANS'
 18 NOTICE OF LODGMENT OF EXHIBITS IN SUPPORT OF
 ITS MOTION TO DISMISS PETITION TO CONFIRM
 ARBITRATION AWARD

20 in a sealed envelope, postage fully paid, addressed as follows:

21 Kristin L. Martin, Esq.
 22 Davis, Cowell & Bowe, LLP
 595 Market Street, Suite 1400
 23 San Francisco, CA 94105

24 Attorneys for Petitioner
 25 UNITE HERE INTERNATIONAL UNION
 26 (415) 597-7200
 27 [FAX] (415) 597-7201

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Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 4, 2008, at San Diego, California.

Barry Dyer

Rosa Dyer